

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:	:	
Randy Jennings Stillion,	:	
Mildred Jane Stillion,	:	Case No. 15-57784
	:	Chapter 13
Debtors.	:	Judge Preston

**DEBTORS' MOTION TO AVOID AND STRIP THE UNSECURED JUDGMENT LIEN OF
OHIO DEPARTMENT OF TAXATION**

Now come Debtors, Randy & Mildred Stillion, by and through counsel, and respectfully request this Court issue an Order to avoid and strip the judgment lien of Ohio Department of Taxation pursuant to 11 U.S.C. §506(a). Debtors seek a determination that the claim is a general, unsecured claim, pursuant to 11 U.S.C. §506(a), and request that the lien be released and cancelled of record. Debtors make this request on the basis that a secured first mortgage lien on the subject real estate exceeds the value of that property and there is no equity to secure Ohio Department of Taxation's judgment lien, as more fully set forth in the Memorandum in Support, below.

Respectfully submitted,

/s/ Crystal I. Zellar
Crystal I. Zellar (#0038785)
Shelley E. Hibburt (#0091736)
Zellar & Zellar, Attorneys at Law, Inc.
720 Market Street
Zanesville, Ohio 43701
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Counsel for Debtors

MEMORANDUM IN SUPPORT

Debtors, Randy & Mildred Stillion (hereinafter “Debtors”) filed for relief under Chapter 13 on December 7, 2015. The Chapter 13 Plan has not yet been confirmed. The Debtors’ first statutory Plan payment has not yet been made, and is not due until thirty (30) days from the date of entry of the Order for Relief.

Debtors own the residential real estate located at 10806 Linwood Road, Pleasant City, Ohio. The Debtors' real estate has a fair market value of Forty-three Thousand Two Hundred Fifty and 00/100ths Dollars (\$43,250.00) based on the undisputed appraisal submitted by the Debtors on

December 10, 2015, which was served on all secured creditors pursuant to Local Bankruptcy Rule 3012-1(d)(2), (Pl# 9). Ohio Department of Taxation has not filed an objection to confirmation of the Debtors' proposed Chapter 13 Plan, nor have they contested the Debtor's valuation of the real estate in accordance with 11 U.S.C. §1327(a) as made applicable in this case by 11 U.S.C. §1325(a)(5), Ohio Department of Taxation is not the holder of a secured claim as that term is defined in the United States Bankruptcy Code.

On December 14, 2001, Debtors executed a note and mortgage, in favor of Select Portfolio Servicing Inc., for a first mortgage on the residence. Debtors owe Select Portfolio Servicing Inc. the sum of Ninety-five Thousand and 00/100ths Dollars (\$95,000.00) on the first mortgage. Subsequently, Ohio Department of Taxation filed a judgment lien on June 14, 2013, found at 13ETL00685 of the Guernsey County Official Records, in the amount of \$500.00 against Debtors.

The amount due on the first mortgage lien held by Select Portfolio Servicing Inc. exceeds the undisputed value of the subject real estate. There is, therefore, insufficient equity in the subject real estate to secure Ohio Department of Taxation's judgment lien. The judgment lien of Ohio Department of Taxation should be deemed to be unsecured pursuant to 11 U.S.C. §506(a).

WHEREFORE, your Debtors respectfully request that:

- i. This court issue an Order deeming the Judgment Lien of Ohio Department of Taxation, recorded in the Guernsey County Official Records on June 14, 2013 at 13ETL00685 to be wholly unsecured;
- ii. This court issue an order avoiding Ohio Department of Taxation's judgment lien finding it to be wholly unsecured, pursuant to 11 U.S.C. §506 (a);
- iii. Said lien be released and cancelled by the County Recorder upon receipt of a certified copy of the Order on this Motion; and
- iv. For such other relief as this Court deems appropriate in this matter.

Respectfully submitted,

/s/ Crystal I. Zellar

Crystal I. Zellar (#0038785)

Shelley E. Hibburt (#0091736)

Zellar & Zellar, Attorneys at Law, Inc.

Counsel for Debtors

NOTICE AND CERTIFICATE OF SERVICE

I hereby certify that on **February 3, 2016** a copy of the foregoing **Debtors' Motion to Avoid and Strip the Unsecured Judgment** was served on the following registered ECF participants, **electronically** through the court's ECF System at the email address registered with the court:

US Trustee
Chapter 13 Trustee
Brian M. Gianangeli, Esq.

and on the following by **ordinary U.S. Mail** addressed to:

Randy & Mildred Stillion
10806 Linwood Road
Pleasant City, Ohio 43772

Ohio Department of Taxation
Attn: Bankruptcy Division
P.O. Box 530
Columbus, Ohio 43266-0030

Ohio Department of Taxation
c/o Attorney General of Ohio
Collections Enforcement Section
150 East Gay Street 21st FL
Columbus, Ohio 43215

Brian M. Gianangeli
The Law Office of Charles Mifsud, LLC
6305 Emerald Parkway
Dublin, Ohio 43016

as and for NOTICE that the attached request for relief would be filed. The undersigned will present to the Court a proposed order granting the relief sought, unless, within twenty-one (21) days after this date, a written memorandum in opposition along with a request for hearing is filed with the Court and served on the undersigned.

/s/ Crystal I. Zellar
Crystal I. Zellar (#0038785)
Shelley E. Hibburt (#0091736)
Zellar & Zellar, Attorneys at Law, Inc.
Counsel for Debtors

UNITED STATES BANKRUPTCY COURT
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IN RE: :
Randy Jennings Stillion, :
Mildred Jane Stillion, : Case No. 15-57784
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**NOTICE OF FILING OF DEBTOR'S MOTION TO AVOID AND STRIP THE UNSECURED
JUDGMENT LIEN OF OHIO DEPARTMENT OF TAXATION**

The Debtor has filed papers with the Court to avoid and strip and unsecured judgment lien.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to grant the relief sought in the motion/objection, then on or before **twenty-one (21) days from the date set forth in the certificate of service for the motion/objection**, you must file with the court a response explaining your position by mailing your response by regular U.S. Mail to: US Bankruptcy Court, Clerk's Office, 170 North High Street, Columbus, Ohio 43215, OR, your attorney must file a response using the court's ECF System.

The court must **receive** your response on or before the date above.

You must also send a copy of your response either by 1) the court's ECF System or by 2) regular U.S. Mail to:

US Trustee - ustpreion09.cb.ecf@usdoj.gov
Chapter 13 Trustee - trustee@ch13.org
Crystal I. Zellar, Esq., mail@zellarlaw.com
Randy & Mildred Stillion, 10806 Linwood Road, Pleasant City, Ohio 43772

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion/objection and may enter an order granting that relief.

Date: February 3, 2016

/s/ Crystal I. Zellar
Crystal I. Zellar (#0038785)
Shelley E. Hibburt (#0091736)
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